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VIA FEDERAL EXPRESS

Ms. Magalie R. Salas, Secretary
Federal Communications Commission
1919 M Street, NW, Room 222
Washington, DC 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Re: Universal Service Contribution Requirements

Dear Ms. Salas:

On behalf of Affinity Corporation, I enclose for filing an original and five copies of a Petition for Partial Waiver of the Universal Service Contribution Requirement contained in Section 54.703 of the Commission's Rules. We have been advised that no filing fee is associated with this petition.

Also enclosed is an additional copy. Please date-stamp and return it to us in the enclosed self-addressed, stamped envelope.

If you have any questions regarding our submission, please don't hesitate to call me.

Sincerely,

Carl W. Hibbert

Carl W. Hibbert

Enclosure

cc: A. Richard Metzger, Chief
Common Carrier Bureau

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of AFFINITY CORPORATION Petition for Partial Waiver of the Universal Service Contribution Requirement Contained in Section 54.703 of the FCC's Rules	))))))))	File No. CC-98-______

To: The Common Carrier Bureau
Universal Service Branch

PETITION FOR PARTIAL WAIVER

The Federal Communications Commission ("Commission") has ordered any carrier that provides interstate service must contribute to the Universal Service funds based on their interstate revenues. Affinity Corporation ("Affinity") is a telecommunications company that provides only resold interstate service within the continental United States states. Affinity is currently experiencing an extended decline in interstate revenues. As it affects Affinity's Universal Service fund obligations, the declining revenues results in an inequitable and unfair outcome for Affinity, as explained in more detail below. Accordingly, Affinity respectfully petitions the Commission for a partial waiver of the Universal Service contribution requirement set forth in the Commission's Report and Order[1] and codified at 47 C.F.R. 54.703.

[1] Federal-State Joint Board on Universal Service, *Report and Order*, 12 FCC Rcd 8776 (rel. May 8, 1997) ("Universal Service Order"), *consolidated appeals pending sub nom. Texas Office of Public Utility Counsel v. FCC*, Civ. No. 97-60421 (5th Cir.).

Affinity supports the principle of Universal Service and does not seek a waiver of the contribution requirement calculated and based upon its actual and current interstate revenues. Affinity limits its request only to a partial waiver of its Universal Service contribution--that portion which is based on prior revenues versus their current, and actual revenues.

BACKGROUND

Beginning in 1998, interstate telecommunications carriers must contribute to the Universal Service fund. The Commission assesses contributions on end-user revenues to support the high-cost and low-income telecommunications services for schools, libraries and rural health providers.

The Commission intended broad application of this obligation in an attempt to ensure that the impact of the contributions would be equitable, nondiscriminatory and competitively neutral, as required by Congress.[2] This mechanism, however, does not have the intended affect on Affinity.

DISCUSSION

Under Section 1.3 of its rules, the Commission may waive any provision of its rules or orders upon a showing of good cause.[3] A petitioner need only demonstrate that special circumstances, on an individual basis, warrant deviation from the rules and that a waiver would

[2] 47 U.S.C. 254(d) (codifying § 101(a) of the Telecommunications Act of 1996).
[3] 47 C.F.R. 1.3

better serve the public interest than the general rule.[4] Indeed, the Commission's "discretion to proceed in difficult areas through general rules is intimately linked to the existence of a safety valve procedure for consideration of an application for exemption based on special circumstances."[5] The Commission therefore has an "obligation to seek out the 'public interest' in particular, individualized cases."[6] Affinity's situation clearly meets these requirements.

AFFINITY'S DECLINING REVENUES

The intent of the Commission in creating the Universal Service fund was to provide funding for programs supporting schools, libraries and rural health providers on an equitable, nondiscriminatory and competitively neutral basis. The impact on Affinity of the Universal Service fund contribution formula accomplishes none of these goals.

Affinity is a telecommunications company that provides only resold long distance services. Because their revenues are declining and the contributions to the Universal Service fund are based on prior revenues, Affinity finds itself in a unique and unenviable position. It must either maintain current rates to retain their customer base and lose money by paying the fees themselves (and not passing that cost along to the consumer), or Affinity must raise the rates they charge customers and risk alienating and losing customers in its highly competitive market. Neither of these choices is financially feasible on a long-term basis.

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[4] *Northwest Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (DC Cir. 1990) (Waiver is appropriate where "strict compliance [would be] inconsistent with the public interest."); *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (DC Cir. 1969), *cert. denied*, 409 U.S. 1027 (1972).
[5] *WAIT Radio v. FCC*, 418 F.2d at 1157, 1159 (noting the Commission "cannot realistically ignore [such] considerations of hardship [or] equity").
[6] *Id.* at 1157.

As the formula currently stands, Affinity pays into the Universal Service fund based upon a prior six month revenues period. Their average for 1998 so far has been $48,347.32 per month. That amount is less than one-tenth of one percentage of the overall monthly goal of the Universal Service fund.[7] The difference in Affinity's contribution as currently billed, based on the prior six months revenues, and what they would pay if their contributions were based on current monthly revenues is about $10,000 a month. While this amount is seemingly insignificant for a fund that anticipates contributions of exceeding $112 million a month for the first six months of 1998, it is a substantial amount for Affinity.

The goal of the Telecommunications Act of 1996 was, in part, to encourage competition and open markets to new providers of telecommunication services. Affinity's current situation leaves it in a highly disadvantaged position and places an unfair financial burden on it, making it less viable as a choice for consumers. This would be contrary to the intent of the Telecommunications Act.

CONCLUSION

Allowing the partial waiver requested by Affinity is in the public interest. By granting Affinity's request to pay into the Universal Service fund based on a slightly altered calculation, the Commission will enable Affinity to remain competitive and provide more options for the consumers. Granting Affinity's request will have an immaterial effect on the Universal Service

[7] Federal State Joint Board on Universal Service, DD Docket 96-45, *Third Order on Reconsideration*, 12 FCC Rcd 22801 (1997) (The *Third Order on Reconsideration* revised the collection amounts, directing the administrator to collect and spend no more than $50 million for the first six months of 1998 to support the rural health care universal service support mechanism and no more than $625 million for the first six months of 1998 to support the schools and libraries universal service support mechanism, which averages to a total of $112.5 million per month).

funding. At the same time, it will ensure that Affinity is able to retain its competitive status in this market as well as contribute at a more realistic and accurate level to the Universal Service fund.

For the reasons set forth above, the Commission should grant Affinity's petition for a partial waiver and assess Universal Service contributions based only on Affinity's actual and current interstate revenues.

This the 3 day of June, 1998.

Respectfully submitted,

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